

## AMENDMENTS TO CHAPTER 45-03-20

### MODEL RULE REQUIRING ANNUAL AUDITED FINANCIAL REPORTS

Sections 45-03-20-02, 45-03-20-06, and 45-03-20-08 are amended as follows:

#### **45-03-20-02. Definitions.**

1. "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice.
2. "Audited financial report" means and includes those items specified in section 45-03-20-04.
3. "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
4. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.

**History:** Effective October 1, 1995; amended effective \_\_\_\_\_, 2008.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

#### **45-03-20-06. Qualifications of independent certified public accountant.**

1. The commissioner shall not recognize any person or firm as a qualified independent certified public accountant which is:
  - a. Is not in good standing with the American institute of certified public accountants and in all states in which the accountant is licensed to practice; or
  - b. Has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer.

2. Except as otherwise provided ~~herein~~ in this chapter, an independent certified public accountant must be recognized as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's profession as contained in the code of professional ethics of the American institute of certified public accountants and rules and regulations and code of ethics and rules of professional conduct of the North Dakota board of accountancy or similar code.
3. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under North Dakota Century Code chapter 26.1-06.1, the mediation or arbitration provisions shall operate at the option of the statutory successor.
4. A partner or other person responsible for rendering a report may not act in that capacity for more than seven consecutive years. Following any period of service, the person must be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:
  - a. Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
  - b. Premium volume of the insurer; or
  - c. Number of jurisdictions in which the insurer transacts business.

The requirements of this subsection become effective October 1, 1997.

4. 5. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:
  - a. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;
  - b. Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this chapter; or

- c. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.
5. 6. The commissioner may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

**History:** Effective October 1, 1995; amended effective \_\_\_\_\_, 2008

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

**45-03-20-08. Scope of examination and report of independent certified public accountant.** Financial statements furnished under section 45-03-20-04 must be examined by an independent certified public accountant. ~~The examination of independent certified public accountant shall examine~~ the insurer's financial statements ~~must be conducted~~ in accordance with generally accepted auditing standards. ~~Consideration should also be given to other~~ The independent certified public accountant shall also consider procedures illustrated in the financial condition examiner's handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary.

**History:** Effective October 1, 1995; amended effective \_\_\_\_\_, 2008.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1